

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

SEP 23 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

KYLE DAUENHAUER,)	
)	
Petitioner/Appellee,)	2 CA-CV 2010-0041
)	DEPARTMENT B
v.)	
)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
KATIE FEATHERMAN,)	Rule 28, Rules of Civil
)	Appellate Procedure
Respondent/Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF GRAHAM COUNTY

Cause No. DO2005217

Honorable D. Corey Sanders, Judge Pro Tempore

APPEAL DISMISSED

Law Office of Matt N. Clifford, P.C.
By Jeremy J. Waite

Safford
Attorneys for Petitioner/Appellee

Katie Featherman

Bloomington, Illinois
In Propria Persona

ECKERSTROM, Judge.

¶1 Appellant Katie Featherman seeks to challenge on appeal the trial court's order entered pursuant to A.R.S. § 25-404, awarding temporary custody of the parties' children to appellee Kyle Dauenhauer.¹ However, as Dauenhauer correctly notes in his answering brief, this court lacks jurisdiction to consider the appeal.

¶2 This court's power to review actions of the superior court on appeal is prescribed by A.R.S. §§ 12-120.21 and 12-2101. *Searles v. Haldiman*, 3 Ariz. App. 294, 294, 413 P.2d 860, 860 (1966). A temporary order for physical custody issued pursuant to § 25-404 is not an order from which an appeal may be taken under § 12-2101. In *DePasquale v. Superior Court*, 181 Ariz. 333, 337, 890 P.2d 628, 632 (App. 1995), we specifically observed that a temporary custody order issued under A.R.S. § 25-333, renumbered in 1996 as the current § 25-404, is not appealable. *See* 1996 Ariz. Sess. Laws, ch. 192, §§ 2, 32. Section 25-333 and § 25-404 are the same in relevant part. Because the temporary custody order here is not appealable under § 12-2101, we lack jurisdiction to consider it.

¶3 The proper procedure to challenge a temporary custody order is by special action, which allows the proceedings below to be stayed in a timely fashion and enables this court to grant meaningful relief with minimal disruption to a child's life. *See DePasquale*, 181 Ariz. at 336-37, 890 P.2d at 631-32. Here, the trial court's signed minute entry order granting Dauenhauer temporary custody was filed December 29, 2009. Featherman never sought to stay the court's ruling, nor did she seek special action

¹We note that in the same order, the trial court found Featherman in contempt of court. However, her notice of appeal and appellate brief make clear Featherman is only challenging the temporary custody order.

relief in this court. Therefore, although we have discretion to treat the appeal as a special action, *see Robinson v. Kay*, 225 Ariz. 191, ¶ 7, 236 P.3d 418, 420 (App. 2010), we decline to do so here.

¶4 Featherman's appeal is dismissed.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge